

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,  
INC., OPENAI LP, OPENAI GP, LLC,  
OPENAI, LLC, OPENAI OPCO LLC,  
OPENAI GLOBAL LLC, OAI  
CORPORATION, LLC, and OPENAI  
HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

**PLAINTIFF THE NEW YORK TIMES COMPANY'S RESPONSE TO THE OPENAI  
DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL (DKT. 370)**

Under Paragraph 22 of the Protective Order (Dkt. No. 127), Plaintiff The New York Times Company (“The Times”) responds to the OpenAI Defendants’ (“OpenAI”) December 23, 2024 Motion for Leave to File Under Seal (Dkt. 370) (“Motion to Seal”). OpenAI filed the Motion to Seal in connection with its Objection to Discovery Orders (Dkt. 371) (“OpenAI’s Objection”). The Motion to Seal addresses material The Times produced in this case.

The Court should grant the Motion to Seal in part; specifically, Exhibits A and B to OpenAI’s Objection (Dkt. 372-1 and Dkt. 372-2) should remain sealed. Exhibit A is a memorandum from The Copyright Clearance Center (“CCC”) to The Times addressing plans for rightsholders to collectively license copyrighted content for use within AI systems. CCC labeled this memorandum as “Confidential to the [] Copyright Clearance Center.” Exhibit B is an email exchange between CCC and The Times relating to the Exhibit A memorandum. Counsel for The Times conferred with CCC to discuss this sealing response, and CCC believes these materials should be sealed. Finally, OpenAI’s Objection brief describes and directly quotes from the Exhibit A memorandum, Dkt. 372, and CCC also believes these direct quotes should be redacted. A revised version of OpenAI’s Objection is attached to this filing, which only redacts the direct quotes to Exhibit A, as opposed to OpenAI’s description of Exhibit A.

Although “[t]he common law right of public access to judicial documents is firmly rooted in our nation’s history,” courts “must balance competing considerations against” this presumption of public access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). “[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in

connection with dispositive motions . . . .” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.* This standard applies here because the Motion to Seal addresses material cited in an objection to a discovery ruling.

This response narrows the scope of the Motion to Seal, confining sealing to the attached exhibits and the direct quotes to those exhibits. By so confining its request, this response targets only “specific business information and strategies, which, if revealed, may provide valuable insights into [CCC’s] current business practices that a competitor would seek to exploit.” *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (granting sealing request).<sup>1</sup>

For these reasons, OpenAI’s Motion to Seal should be granted in part. Specifically, Exhibits A and B (Dkt. 372-1 and Dkt. 372-2) should remain sealed, and limited portions of OpenAI’s Objection (Dkt. 372) should remain redacted.

Dated: January 3, 2025

/s/ Ian Crosby

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<sup>1</sup> The Times supports sealing a small portion of the Exhibit A memorandum—specifically, a chart that contains nonpublic revenue figures for Times licensing deals. This chart comprises just one-third of one page of the four-page memorandum.

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***The New York Times Company***

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2025, I caused the foregoing document to be electronically filed with the Clerk of the United States District Court for the Southern District of New York using the CM/ECF system, which shall send electronic notification to all counsel of record.

*/s/ Ian Crosby*